IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.320 OF 2006
IN
EXECUTION APPLICATION NO.120 OF 1999
IN
SUIT NO.2830 OF 1991

Isabel willie Pimento and others Plaintiffs
versus
M/s.Mohmed Haji Gafoor and Brothers Defendants
and
Mohamed Irshad Idris Kureshi Applicant

Mr.A.B.Unnikrishnan for applicant.

Mr.Shailesh Shah i/by Pandya & Poonawalla for plaintiffs.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 11.07.2006

DATE OF PRONOUNCING THE JUDGEMENT : 30.08.2006

PER COURT :

1. This Chamber Summons is by the applicant and the relief claimed is that the attachment levied on an immovable property bearing Survey No.149A, Hissa No.13, CTS No.1368, admeasuring 570.3 sq.mtrs. and Survey No.144A, Hissa No.5, CTS No.1353, admeasuring 550 sq.mtrs. situate at

Village Marol, Taluka Andheri in the Mumbai Suburban District be raised. The applicant also challenges an order passed by the Commissioner for Taking Accounts on 29th April 2005. The facts which are not in dispute are these.

2. A suit was filed in this Court by the plaintiffs against the defendants claiming that the suit property which is more particularly described at Exhibit-A to the plaint, be handed over to the plaintiffs and an order & decree to this effect be passed by this Court. A declaration was sought that Agreement dated 23rd September 1979 (Exhibit H-1) is fabricated, sham and bogus, null and void and not binding upon the plaintiff.

3. By prayer clause (c) a money decree in the sum of Rs.10,67,500/- was claimed and further mesne profits @ Rs.20,000/- per month and such other sum as is decided by this Court, till the possession is handed over was also claimed.

4. The alternate relief in the plaint is that this Court should declare that plaintiff nos.3 to 12 have 4/5th undivided share, right, title and interest in the suit property and it be divided

by metes and bounds between the above plaintiffs and the defendants and in accordance therewith possession be handed over. In the event said property is not capable of being divided by metes and bounds, then it be sold by and under the directions of this Court and from the sale proceeds the 4/5th undivided share be paid over with interest.

5. It is not in dispute that a decree was passed in this suit on 13th March 1997 and apart from the relief of possession this Court directed the defendants to pay to the plaintiffs a sum of Rs.10,67,500/- with interest @ 18% p.a. as also mesne profits. The case of the plaintiffs is that a huge sum is due and payable and the defendants are avoiding making payment of the same.

6. Against the decree passed on 13th March 1997 the defendants (judgement debtors) preferred an appeal being Appeal No.626 of 1997. They filed a Notice of Motion being Notice of Motion No.2317 of 1997. A conditional order was passed by the Division Bench on this Notice of Motion on 17th July 1998 whereby the Court Receiver was appointed Receiver of the property and the

defendants-judgement debtors were required to deposit certain monies in this Court. It is upon these terms that the execution of the decree was stayed. The judgement debtors-appellants failed and neglected to abide by these conditions. They withdrew the appeal on or about 14th June 1999.

7. It appears that the decree was not satisfied and, therefore, Execution Application No.120 of 1999 has been filed. The properties mentioned hereinabove have been attached and further steps in execution were initiated.

8. The applicants took out Chamber Summons No.1618 of 2003 for raising attachment in respect of abovementioned properties. It appears that after the ad-interim order was passed in this Chamber summons, the Commissioner for Taking Accounts has, pursuant to the directions of this Court, passed an order holding that the applicants have failed to establish their claim and, therefore, the above properties be included in the proclamation of sale. Thereafter, Chamber Summons No.1618 of 2003 was decided finally and this Court set aside the order passed by the Commissioner on 21st July 2004 and remitted the matter back to the Commissioner. This order is

of 21st March 2005.

9. Pursuant to remand, the parties appeared before the Commissioner for Taking Accounts and made their submissions.

10. The applicant contended that he is the grand-son of one M.H.Ghafoor, who was a partner in the defendant firm. He submitted that one Mohamad Suleman - one of the partners of the judgement debtor firm, had filed a suit for dissolution of the partnership firm and accounts in this Court being Suit No.1425 of 1991. In that suit a Notice of Motion being Notice of Motion No.1990 of 1991 was taken out and an order was passed by this Court on 7th September 1993 holding that the properties which are made subject matter of the proclamation in the present proceedings, are not properties of the partnership and there is nothing on record to show that they are assets of the partnership concern. Against this order dated 7th September 1993 an appeal was preferred being Appeal No.878 of 1993 in which an order was passed on 4th May 1996 by a Division Bench restraining the defendant no.1 in that suit, from alienating and/or encumbering and/or creating any third

party rights in any manner or parting with possession of Plots bearing CTS Nos.1353 and 1368. In these circumstances, these properties cannot be put up for sale in execution of the subject decree. The applicant pointed out that his grand father is the owner of the attached properties. For establishing his claim, he relied upon a Conveyance Deed dated 11th March 1974. This conveyance is registered with the Sub Registrar of Assurances, Bandra and Index-II is issued by the authorities in the name of late M.H.Ghafoor. He also relied upon the Property Registration Card, Assessment Bills etc. in support of the plea that Mr.M.H.Ghafoor is the owner of the property. He submitted that Mr.M.H.Ghafoor died on 14th January 1998. The applicant also pointed out that one of the partners of the partnership firm had filed an affidavit in Suit No.1425 of 1991 in reply to the Notice of Motion taken out therein and pointed out that property is self acquired property of defendant no.1 (Mohamed Ghafoor) therein and the firm has no right, title or interest in the same. The applicant relied upon the records and several documents of the firm to show that the attached properties are not the assets of the firm.

11. It is on this basis that the applicant applied for raising attachment and exclusion of properties from sale.

12. The decree holder appeared before the Commissioner and pointed out that the decree in the present suit has been passed against the partnership firm of M/s.M.H.Ghafoor and Sons. Under the decree, the defendants are jointly and severally liable as partners of the firm and personally, to discharge the liability. The ex-parte decree is not set aside. It is pointed out that the applicant does not dispute that Mr.M.H.Ghafoor was a partner of the firm. It is pointed out that even for arguments' sake it is assumed that the property is the self acquired property of late grand father of the applicant, even then, the attachment is valid as the decree is against the personal properties of the partners of the firm. They are personally liable to discharge the liabilities of the firm. Reliance in this behalf was placed on certain provisions of Indian Partnership Act, 1932 and it was contended that there is no substance in the contentions of the applicant. It is also pointed out that once the judgement debtor filed an appeal against the ex-parte decree dated 13th May

1997 and withdrew the same, then it is not open for the applicant to raise the contentions as are raised in the present Chamber Summons.

13. The decree holder also placed reliance on the fact that the uncle of the present applicant and son of the deceased partner, had taken out Chamber Summons being Chamber summons No.777 of 2001 for setting aside the order of attachment of the very same properties which are subject matter of present Chamber Summons. The son of the deceased, Yunus Mohamad Hanif, is the uncle of present applicant. This Court passed an order on this Chamber Summons and held that the records of the firm show that these properties were purchased by the firm from the monies and funds of the firm. There is an entry to this effect in the City Survey Records. In such circumstances, in the light of the order dated 15th January 2002 on Chamber Summons No.777 of 2001, all contentions of the present applicant deserve to be rejected.

14. Lastly, it is contended that pendency of Civil Suit No.1425 of 1991 and an order of injunction passed therein does not prevent this Court from attaching the properties and selling

them in execution of the present decree. The injunction is against the party and not against the Court. In these circumstances, the objection be rejected.

15. The Commissioner for Taking Accounts has by the impugned order rejected all the objections and directed that in the proclamation of sale the properties in the present Chamber Summons may also be included and the Sheriff to take appropriate steps in pursuance thereof.

16. Shri Unnikrishnan - learned counsel appearing for the applicant in support of the Chamber Summons has contended that after the matter was remitted to the Commissioner, the Commissioner was informed in writing by the applicant on 23rd March 2005 and 4th April 2005 that there are documents with him including registered conveyance to substantiate his pleas in respect of both properties. Similarly, on 15th April 2005 the applicant sought inspection of City Survey records, copies of which were produced by the decree holder as it was the applicant’s case that same are forged.

17. Shri Unnikrishnan’s grievance is that no

cognizance of these complaints has been taken by the Commissioner. There is no reply given to these letters. It is rather unfortunate that the Commissioner fixed a hearing in this matter on 28th April 2005 i.e. one day before the time limit set by this court was to come to an end. At the time of hearing the applicant handed over latest City Survey Record dated 30th March 2005 in respect of CTS Nos.1353 and 1668, balance sheet of the firm for the year ending on 31st March 1992 and copies of earlier letters.

18. Shri Unnikrishnan submitted that the applicant specifically pointed out before the Commissioner that his uncle has colluded with the decree holder and, therefore, no cognizance be taken of the order passed by this Court on 15th January 2002 in Chamber Summons No.777 of 2001. He submits that when there is a registered conveyance of 1974 in the name of late Mohamad Haji Ghafoor, there is no question of city survey office issuing any extract or making an entry in the property card demonstrating that the property belongs to the firm. Shri Unnikrishnan points out that copies of the proceedings in Suit No.1425 of 1991 were also produced before the commissioner including copies of the interim

orders passed therein.

19. He submits that the Registered Conveyance, Index-II extract, Assessment Record, Income Tax Records were produced and all these documents demonstrate that attached properties are the personal properties of late Mohamed Haji Ghafoor. The applicant is admittedly the grand son of late Mohamad Haji Ghafoor. His father is Mohamad Idris Qureshi. The applicant pointed out that his father has also expired. The heirs of late Mohamad Haji Ghafoor are residing in rooms in the attached properties. He also submits that partnership firm came into existence after 1974. In these circumstances, the Commissioner could not have disallowed the claim and included the subject properties in the proclamation of sale. The order passed by the Commissioner, therefore, deserves to be set aside.

20. Shri Unnikrishnan also relied upon the fact that Suit No.1425 of 1991 is pending. The order of injunction passed in that suit restrains sale and Alienation of these properties. Shri Unnikrishnan pointed out that appeal filed by the judgement debtors has been withdrawn purportedly on the ground that the matter is settled out of

Court. However, there is no settlement placed on record. In such circumstances, no reliance can be placed on this order.

21. On the other hand, Shri Shah appearing for the decree holder submits that this is a case where an attempt is made repeatedly to defeat and frustrate the decree. He submits that the self same contentions have been raised from time to time. He submits that firstly it was the son of the deceased partner and now it is the grand son who is coming forward with the same pleas. Shri Shah points out that in the earlier Chamber Summons all these aspects were argued and the matter was remitted to the Commissioner for consideration afresh and for decision. The Commissioner has given sufficient opportunity to the parties and his order requires no interference.

22. Shri Shah appearing for the decree holders has invited my attention to an affidavit dated 10th January 1994 filed by the deceased Mohamad Haji Ghafoor in Notice of Motion No.1990 of 1991 in Suit No.1425 of 1991. In this affidavit, according to the decree holder, the deceased Mohamad Haji Ghafoor admitted that the properties

which are subject matter of attachment and sale in the present proceedings, were purchased by him from the monies which were advanced by the said partnership firm. This fact is also corroborated, according to the decree holder, in the order passed by this Court on 7th September 1993. He submits that once this is the stand of the deceased grand father, then no reliance can be placed on the conveyance and other documents by the applicant. All objections to the attachment must fail once this is the stand of the deceased grand father. He submits that just because the suit is pending, does not mean that this Court is prevented from executing the present decree and attaching & selling the properties which are subject matter of that suit in pursuance of the decree in Suit No.2830 of 1991. Therefore, even assuming that the properties are the personal properties of the deceased grant father, even then they can be sold in execution of a decree against the firm. Shri Shah has relied upon Order XXI, Rules 49 and 50 read with Order XXX, Rules 6 and 7 of the CPC in support of his contentions that the decree holder is entitled to proceed against the personal properties of the partner once a decree is passed against the partnership firm. He submits that it

is not disputed that the deceased was a partner in the firm. Once this aspect is not disputed, then there is no question the properties being personal or individual properties of the partner. Hence, the Chamber Summons be dismissed.

23. In support of his contentions, Shri Shah has relied upon several documents compilation of which has been tendered so also the decision of the Orissa High Court reported in AIR-1994-Orissa-173 (Prafulla Kumar Mohapatra Vs. Jaya Krushna Mohapatra and others).

24. In the present case, the following facts are not disputed viz. :-

a) That chamber summons No.1618 of 2003 was decided by this Court and the Commissioner was directed to decide the objections to the sale of property on or before 29th April 2005;

b) That suit No.1425 of 1991 is pending. That suit is filed by Mohamad Suleman (since deceased) versus Mohamed Hazi Ghafoor (since deceased) and others. The prayer in the said suit is that the

partnership firm M/s.Mohamed Hazi Ghafoor and Brothers carrying on business at Marol-Maroshi Road, Marol, Andheri (East), Mumbai, be dissolved and such other orders and directions as are necessary in law be passed. The applicant before me is Mohamad Irshad Idris Qureshi and the late grand father is Mohamad Hazi Ghafoor. The controversy as to whether the property which is sought to be sold in execution by the subject decree, is a property of the firm or a self acquired property of late grand father of the applicant herein, is thus pending;

c) In the suit filed for dissolution of the partnership and accounts, a Notice of Motion in Notice of Motion No.1990 of 1991 was taken out and was placed before a Single Judge of this Court and an order was passed thereon on 7th September 1993. The controversy was whether CTS No.1353 and 1368 are properties of the partnership firm or not. The learned Single Judge held that there is no sufficient material to hold that the

attached properties are assets of the firm. The motion was partly allowed. That order of the learned Single Judge dated 7th September 1993 was challenged in appeal being Appeal No.878 of 1993 in which an order dated 4th May 1996 was passed by a Division Bench of this Court restraining the deceased grand father of the applicant herein from alienating and/or encumbering and/or creating any third party rights in any manner and/or parting with possession of the plots bearing CTS Nos.1353 and 1368 or any part thereof. Thus, the order of the Single Judge was substituted as above;

d) The present suit namely Suit No.2830 of 1991 was filed on 4th September 1991 whereas Suit No.1425 of 1991 has been filed on 26th April 1991. The prayers in Suit No.2830 of 1991 are that the defendants/judgement debtors be ordered and decreed to hand over vacant possession to the plaintiff-decree holder of the suit property more particularly described at Exhibit-A. The suit proceeds on the basis that CTS No.1367

admeasuring 726 Sq.Yards equivalent to 602.58 sq.mtrs. is the property of the firm. There are other prayers in the suit which are in the alternative and it appears that this Court decreed the suit for possession. This Court also directed under the decree dated 31st March 1997 in Suit No.2830 of 1991 that the judgement debtors should pay a sum of Rs.10,67,500/- with interest @ 18% p.a. from the date of filing of the suit till the date of realisation so also further compensation @ Rs.20,000/- per month. According to the decree holder, a huge sum of Rs.59,05,464=13 Ps. is due and payable by the judgement debtors to the decree holder;

e) An appeal No.626 of 1997 against this decree was filed and an application for stay by way of Notice of Motion No.2317 of 1997 was taken out therein. A conditional order was passed on the Notice of Motion. According to the decree holder, the appellants failed to abide by the terms and conditions set out in the order passed by the Division Bench

on 17th July 1998 in Notice of Motion no.2317 of 1997. This appeal was allowed to be withdrawn by this Court on 14th June 1999;

f) Execution proceedings were taken out thereafter which were obstructed by one Yunus Mohamed Hazi Ghafoor claiming to be the partner of defendants/judgement debtors. He took out Chamber Summons No.771 of 2001. The said Mohamed Yunus alleged that CTS Nos.1353 and 1368 which have been attached, were his personal self acquired properties and not that of the partnership firm;

g) Chamber Summons No.777 of 2001 was heard and dismissed on 15th January 2002 by this Court. Similarly, one Dr.Qureshi Mohamed Yakub, nephew of Mohamed Hazi Ghafoor appeared before the Commissioner and filed an affidavit pointing out therein that the property (CTS Nos.1353 and 1368) was an asset of the firm;

h) Reliance is also placed on a suit filed in the City Civil Court No.399 of

1989 by four partners wherein some settlement was arrived at later on. The applicant is the nephew of Yunus Mohamed Hanif, applicant in Chamber Summons No.777 of 2001. This Yunus is one of the son of the deceased grand father MOhamed Hazi Ghafoor.

25. On the basis of above, it is the contention of the decree holder that repeated attempts have been made to frustrate the execution of the decree. These attempts are made by the alleged representatives and LRs of the deceased Mohamed Hazi Ghafoor. All applications are made with a malafide intent. Further, submission is that the deceased Mohamed Hazi Ghafoor, during his life time, has filed an affidavit in Notice of Motion No.1990 of 1991 in Suit No.1425 of 1991 wherein he admitted that the properties bearing CTS Nos.1353 and 1368 were purchased from the monies advanced by the partnership firm to him. Therefore, it is the submission that even without any affidavit being filed and a fact being proved that the monies were advanced by the firm, these properties are belonging to the said partnership firm only, is proved. This affidavit is in records of the pending Suit No.1425 of 1991. It

is also contended that assuming these properties to be the personal properties of Mohamed Hazi Ghafoor, even then, under the provisions of Order XXI, Rule 50 R/W Order XXX, Rules 6 and 7 of CPC, the decree holders can proceed against the personal properties of the deceased partner of the first defendant firm.

26. Before me, however, the argument is that the burden is on the applicant and he has failed to discharge the same. The applicant apart from producing certain documents, has not been able to show that the properties are self acquired properties of his deceased grand father.

27. In my view, the applicant has produced in this case, even before the Commissioner as also during the course of hearing before me, two Conveyance Deeds dated 11th March 1974 and the extract of Index-II. From a perusal of these documents including Index-II, the argument is that the address of the deceased is the same namely Mohamed Hazi Ghafoor Compound. Therefore, it is alleged that this Court should proceed on the basis that the properties are not self acquired properties of the deceased.

28. My attention is also invited to the order passed in Chamber Summons No.777 of 2001 which is taken out in the present suit by Mohamed Yunus Mohamed Hanif - uncle of the present applicant. Having perused this order, it is clear that the applicant therein could not produce any documents to show the title of the deceased grand father of present applicant. The applicant in that Chamber Summons could not even produce the Conveyance Deed dated 11th May 1974. However, in this case, not once but twice, the applicant has produced the Conveyance Deeds and Index-II extracts and relied upon other documents as well.

29. In such circumstances, the Commissioner could not have rejected the objections of present applicant by relying upon the order in Chamber Summons No.777 of 2001. Similarly, the Commissioner could not have proceeded to direct that the sale should proceed because in his opinion the City Survey record was not produced by the applicant. The finding proceeds on the basis that a xerox copy of Profit and Loss Account of Mohamed Hazi Ghafoor & Brothers for the year ending on 31st March 1992 and Balance Sheet shows the assets of the partnership firm as a lorry only. The applicant could not produce

the city survey record to show that the attached properties are personal properties of Mohamed Hazi Ghafoor after the property is transferred in the name of Mohamed Hazi Ghafoor & Sons. In other words, Chamber Summons No.777 of 2001 was disposed of on 15th January 2002. The Commissioner is of the opinion that the property has been transferred in the name of Mohamed Hazi Ghafoor & Sons (the firm) after the order dated 15th January 2002 passed by this Court in Chamber Summons No.777 of 2001. The applicant, therefore, was obliged to produce a document of retransfer of attached property in favour of his deceased grand father. This having not been produced and the judgement debtors having unconditionally withdrawn their Appeal challenging the decree so also the order dated 15th January 2002 being allowed to gain finality, the objection of the applicant deserves to be rejected, is the finding of the Commissioner.

30. In my view, the Commissioner was in clear error once the Conveyance Deeds were produced so also Index-II extracts. The contents thereof are not being disputed. These documents were not available when this Court disposed of/dismissed Chamber Summons No.777 of 2001. However, once

these documents have been produced on record, then coupled with the fact that there is a pending Suit No.1425 of 1991, the Commissioner could not have proceeded to direct that the attached property be also put up for sale. The order passed by this Court on Chamber Summons No.777 of 2001 was before my predecessor who decided Chamber Summons No.1618 of 2003 and remitted the matter back to the Commissioner. Therefore, no reliance could have been placed only upon the order on Chamber Summons No.777 of 2001 and withdrawal of the appeal by the judgement debtors. Moreover, the controversy regarding the attached properties being assets of the firm or not is involved in the pending suit.

31. In the present case, it is pertinent to note that the present suit is subsequent in point of time. Though, it may be decreed earlier the issue before me is can in execution of the decree the instant properties be attached and sold? It is not as if the decree cannot be executed at all. Its execution is not being interfered with. In law, in execution of a money decree if any immovable property is attached the attachment can be objected to. There is a complete code set out to object to the attachment and sale. Therefore,

it is not as if the present proceedings are not maintainable. Hence, there is no substance in the complaint of decree holder that the decree is frustrated or defeated. Moreso, when its execution otherwise is permitted in law and would not be affected by these proceedings.

32. When this Court passed an order directing the Commissioner to decide the objections afresh on 29th March 2005, all these facts were very much on record. Therefore, the Commissioner was obliged to go into these aspects and not rely merely upon an earlier order and withdrawal of the appeal by the judgement debtors. The Commissioner has not assigned any other reason for rejecting the objections. Assuming that some other reasons are available even they are patently unsustainable. The reason that interim injunction order in Suit No.1425 of 1991 does not prevent sale of the attached property in execution of a decree passed in a distinct suit, is also of no assistance for sustaining the findings of the Commissioner because the learned Single Judge’s order passed on 7th September 1993 in Notice of Motion taken out in Suit No.1425 of 1991 has been specifically set aside and substituted by the Division Bench order granting

an interim injunction during pendency of the suit. In such circumstances and when the suit is pending and the controversy is at large, the Commissioner could not have proceeded to rely upon that order. There is a Receiver appointed in that suit and also there is an injunction against creating any third party rights. The injunction may be against first defendant who is party to the suit but the Commissioner could not have directed that the sale of the attached property could go through despite pendency of the suit. More so, in the facts and circumstances of present case when it is not clear as to whether the attached properties are self acquired properties of the predecessor-in-title of the applicant or that the same are the assets of the partnership firm M/s.M.H.Ghafoor & Brothers. Hence, it is clear that all three reasons assigned by the Commissioner in support of his ultimate finding and conclusion, are patently unsustainable. The Commissioner has erred in directing that the attached properties be put up for sale and a proclamation be issued therefor.

33. In my view, another remand of this matter to the Commissioner would serve no fruitful purpose. When Suit No.1425 of 1991 is pending and the

pendency affects the sale is the conclusion, then, remand is of no use. Moreover, the present applicant is a party to that suit. The issue therein is about the title or right in the attached properties. The order of interim injunction is in force. Therefore, these proceedings cannot be ignored as suggested by Shri Shah. His submission is that the injunction is against the party to the suit and does not affect right, title or interest in the attached properties. It is not possible to acede to this submission in the facts and circumstances of this case. In any event, I had an occasion to deal with identical submission when I was part of a Division Bench consisting of A.P.Shah, J. (as His Lordship then was) and myself. In the judgement delivered by us in Writ Petition No.405 of 2004 decided on April 22nd, 2004. While discussing the true effect of an order of injunction, we observed thus :-

> "27. Equally untenable is the contention of Shri Naphade that an order of injunction will bind only the transferor in this case. It is his submission that the said order does not bind the world at large. He submits that ownership rights are neither taken away nor restricted in any manner by order of injunction or other preventive directions. He submits that the transfer in favour of his client

was thus neither invalid nor illegal, leave alone null and void. For the reasons already recorded above, we find it difficult to accept this contention of Shri Naphade. Decision of the Supreme Court in the case of Krishan Kumar Narula vs. State of Jammu and Kashmir, reported in AIR-1967-SC-1386 has no application. There, the Supreme Court was distinguishing an order of stay from an order of injunction. The distinction was made in the context of consequences upon breach and violation of such orders. It is in that context that the Supreme Court observed that the order of stay is qua a Court, whereas an order of injunction reaches and touches a party to this lis. These observations cannot be applied when it is noticed that during the pendency of an order of injunction, immovable property, which is subject matter of restraint or injunction, is transferred. When this course is admittedly adopted, then there is no choice but to declare the transaction as illegal. There is no question of then deciding the nature and effect of the order of injunction.

28. Mr.Naphade’s submissions overlook the effect of an order of injunction. An order issuing interlocutory injunction is issued with a view to preserve and protect status quo during the pendency of the suit or litigation. The true effect of such an order is, therefore, preservation of status quo prevailing as on the date of issuance of the order. Any alteration in the status quo as prevailing and directed to be maintained by the Court of law is not permissible except with leave or sanction of Court. It is well settled that if Courts are not to honour and implement their own orders and encourage party litigants, be they public authorities, to invent methods of their own to short circuit and give a go by to the obligations and liabilities incurred by them under orders of Courts, the rule of law will become casualty in the process-a consequence to be jealously averred by all and at any rate by the highest Courts in the State. (See AIR-2001-SC-2790 at P.2792)."

34. Therefore, the submission is wholly untenable. The injunction order and the pendency of suit No.1425/1991 cannot be brushed aside as suggested by Shri Shah. For the above reasons I do not find that it is necessary to consider as to whether the judgement of the Single Judge of Orissa High Court would apply in the facts of this case. That judgement in any event was rendered in the context of applicability of provisions of Order 39, Rule 2A of CPC.. Hence it is distinguishable.

35. Thus, the Commissioner could not have directed sale of the properties straight way. In this view of the matter, the Chamber summons succeeds. It is made absolute in terms of prayer (a) with no order as to costs. Needless to state that the order of the Commissioner is set aside. However, it is clarified that all observations in this order are for disposal of this Chamber Summons and would not prevent the plaintiff from executing the subject decree otherwise and in accordance with law. Similarly, the contentions of parties in Suit No.1425 of 1991 would remain

unaffected by this order.

(S.C.DHARMADHIKARI, J.)